

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

INTERNATIONAL REHABILITATIVE  
SCIENCES, INC., d/b/a RS MEDICAL, a  
Washington corporation,

Plaintiff,

v.

KATHLEEN SEBELIUS, in her official  
capacity as Secretary, United States  
Department of Health and Human Services,

Defendants.

Case No. C08-5442RBL

ORDER GRANTING MOTION TO  
SUPPLEMENT THE  
ADMINISTRATIVE RECORD

THIS MATTER comes before the Court on Plaintiff's Motion to Supplement the Administrative Record [Dkt. #45]. The Court has reviewed the materials filed for and against said motion. The Court has participated in a conference call with counsel to discuss the merits of the motion. Further argument is not necessary for the Court to resolve the issue raised by this motion. For the following reasons, the motion is **GRANTED** and the documents identified in Exhibits A, B and C to the Declaration of Debra M. Parrish will be added to the government's certified administrative record and the Defendant will forthwith issue a new certification of administrative record and index thereto consistent with this Order.

In the administrative process underlying this matter the Administrative Law Judge issued a single decision (in the '535 et. al. case) that covered claims for Bioni Care Medical Technologies, Inc. and for RS

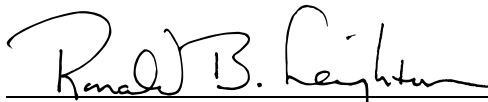
1 Medical. The ALJ did not distinguish between the beneficiaries for either Appellant. The Bioni Care appeal  
2 is before the Maryland District Court captioned Almy v. Sebeluis, Civ. Action No. 08-CV-1245 (D. Md.).  
3 This action before the Western District of Washington covers the appeal of RS Medical.  
4

5 Plaintiff argues that the entire record before the ALJ in the ‘535 et. al. case, which includes documents  
6 that pertain to both RS Medical and Bioni Care beneficiaries, constitutes the “evidence upon which the  
7 findings and decision complained of are based.” 42 U.S.C. § 405(g).

8 Defendant argues that the so-called missing documents listed in Exhibits A, B and C to the Parrish  
9 Declaration (documents added by agreement of the parties (Exhs. A & B) or by Court Order (Exh. C) in the  
10 Almy case in Maryland) are not relevant to this case as they pertain only/primarily to the Bioni Care  
11 beneficiaries. Defendants contend that the current record is sufficient to allow the Court to evaluate the  
12 Secretary’s challenged action and that the Court should not augment the record with documents that are not  
13 relevant to the RS Medical cause before the Court.  
14

15 The Court disagrees. The Court will supplement the record with the documents listed in Exhibits A,  
16 B and C to the Parrish Declaration and will resolve issues of relevance with respect to specific documents  
17 within the context of their use by the parties in a merits-based presentation to the Court. The Motion to  
18 Supplement the Administrative Record [Dkt. #45] is **GRANTED**. The Defendant will forthwith issue a new  
19 certification of record and index consistent with this Order. Plaintiff’s Opening brief is due Friday, February  
20 26, 2010. The Defendant’s Responsive brief is due on Monday, March 22, 2010. The Reply brief is due on  
21 the noting date which is Friday, March 26, 2009.  
22

23 Dated this 31<sup>st</sup> day of December, 2009.  
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25   
26 RONALD B. LEIGHTON  
27 UNITED STATES DISTRICT JUDGE  
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